

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of Kohler Co.)	ET Docket No. 07-61
for Waiver of the Part 15)	
Digital TV Reception Requirement)	
)	
Petition of Electric Mirror, LLC)	ET Docket No. 07-62
for Waiver of the Part 15)	
Digital TV Reception Requirement)	

**COMMENTS OF
LG ELECTRONICS USA, INC.**

LG Electronics USA, Inc. (“LG”) hereby opposes the requests submitted by Kohler Co. (“Kohler”) and Electric Mirror, LLC (“Electric Mirror”) for temporary waivers of the March 1, 2007 deadline by which all television receivers must include digital television tuning capability as set forth in Section 15.117(i) of the Commission’s rules (“DTV tuner requirement”).¹

As a long-time participant in the DTV transition and a leading manufacturer that supported and adhered to the Commission’s DTV tuner requirement from the beginning, LG is surprised that any manufacturer or marketer of television-related products would seek a waiver at this late stage. For the reasons set forth below, we respectfully urge the Commission to deny the requests.

Kohler has requested a waiver of the DTV tuner requirement until January 2008 for two different bathroom mirrors with integrated television receivers that the company

¹ LG assumes that the FCC will confirm that, as of March 1, 2007, Kohler and Electric Mirror ceased any and all manufacturing, imports and interstate shipments of their non-compliant analog television receivers.

plans to introduce in May 2007. Electric Mirror has requested a similar waiver until September 2007 for its bathroom mirrors with integrated 15-inch receivers that the company manufactures primarily for the hotel industry. In order for the FCC to entertain a request for waiver of its rules, the petitioner must demonstrate that “special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest.”² Neither Kohler nor Electric Mirror has met this burden.

Kohler and Electric Mirror have not presented the “special circumstances” necessary to explain their failures to plan and prepare for the well-established and long-anticipated March 1, 2007 DTV tuner requirement deadline. In August 2002—nearly five years ago—the Commission established the DTV tuner requirement and adopted a phased-in schedule whereby tuners would first be required in the largest sized television receivers and then gradually, over a three-year period, required in smaller sized sets.³ The purpose of this phased-in schedule was to give manufacturers “lead time to redesign their products and marketing plans to comply with [the] new requirement.”⁴

In November 2005, the Commission slightly modified the schedule to change the deadline for sets sized 13 to 24 inches from July 1, 2007 to March 1, 2007.⁵ The Commission also concluded that sets smaller than 13 inches should be required to include

² *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1970).

³ *Review of the Commission’s Rules and Policies Affecting the Conversion To Digital Television*, Second Report and Order, 17 FCC Rcd 15978, 15996 ¶ 40 (2002) (“*DTV Review Second Report and Order*”).

⁴ *Id.* at 15995 ¶ 38

⁵ *Requirements for Digital Television Receiving Capability*, 20 FCC Rcd 18607, 18613-15 ¶¶ 18-21 (2005) (“*Receiving Capability Second Report and Order*”).

DTV tuners by March 1, 2007.⁶ In revising the DTV tuner requirement, the FCC concluded that it would not be “overly burdensome for the consumer electronics industry to bring [small receiver] products into compliance with the DTV tuner requirement.”⁷ Whereas other manufacturers, including LG, planned accordingly and began incorporating DTV tuners in their products well in advance of the March 1 deadline, Kohler and Electric Mirror apparently sat on their hands until the 11th hour, despite having years to prepare and develop contingency plans to deal with, as Electric Mirror described them, “[l]ast-minute issues.”⁸

The assertion that Kohler and Electric Mirror operate in niche markets that serve relatively few consumers does not establish a special circumstance warranting a waiver of the DTV tuner requirement. When the Commission established the DTV tuner requirement in 2002, it made no exceptions for small manufacturers or for specialized sets.⁹ Moreover, when granting limited waivers to two manufacturers in consideration of their need to comply with medical safety standards, the Commission reiterated that the DTV tuner requirement covers “viewing units that are included in specialized video systems.”¹⁰ LG, like other reputable manufacturers, has always understood the DTV

⁶ *Id.* at 18616 ¶¶ 25-26.

⁷ *Id.* at 18616 ¶ 25.

⁸ Electric Mirror Petition for Waiver at 4.

⁹ *DTV Review Second Report and Order* at 15999 ¶ 45 (“manufacturers and importers will need to develop DTV receiver products for a wide range of different user needs”); *see also DTV Review Second Report and Order* at 15996 ¶ 40 (applying the requirement for receivers with screen sizes 13 to 24 inches to “all such units”).

¹⁰ *Requirements for Digital Television Receiving Capability*, Order, 21 FCC Rcd 9478, 9480 ¶ 8 (2006) (granting PDI Communications Systems, Inc. a temporary waiver for sets designed specifically for the healthcare industry); *see also Petition of Sumitomo Canada Limited For Temporary Waiver of Section*

tuner requirement as applying to *all* receivers, even those considered to be “niche” products. For example, in compliance with the DTV tuner requirement, LG’s TV-refrigerator, with a 15-inch LCD television on the outside of the door, has been redesigned to include a DTV tuner.¹¹

Kohler and Electric Mirror also cannot justify their waiver requests by blaming their suppliers and the uniqueness of their product designs. Kohler claims that its supplier is having difficulty incorporating a DTV tuner into Kohler’s “unique, small footprint TV receiver.”¹² Electric Mirror states that its problems with third-party suppliers stems from its use of “ultra-thin” LCD televisions.¹³ Given the fact that the DTV tuner requirement has been known to manufacturers and their suppliers for almost five years, the companies’ excuses are unconvincing. Manufacturers should be responsible for the failures of their suppliers and their products’ limitations. Neither Kohler nor Electric Mirror should be granted a waiver of the DTV tuner requirement simply on the basis of apparent poor planning or inadequate design.

In addition to failing to demonstrate special circumstances justifying a waiver, Kohler and Electric Mirror also have failed to demonstrate how grants of their respective

15.117 of the Commission’s Rules, 22 FCC Rcd 122, 123-124 ¶ 5 (2007) (granting Sumitomo Canada Limited a temporary waiver for sets also designed specifically for the healthcare industry). The products manufactured by Kohler and Electric Mirror do not need to comply with strict safety restrictions. Therefore, Kohler and Electric Mirror cannot rely on the recent waivers as precedent for their own waiver requests.

¹¹ LG Electronics, LG Electronics Previews World’s First High Definition TV Refrigerator; Digital TV Tuner Model Planned for Introduction in Spring 2007 (press release), Nov. 1, 2006, http://us.lge.com/pressrelease/refrigerator/LG_HDTV_Refrigerator_Planned_for_2007.pdf.

¹² Kohler Petition for Waiver.

¹³ Electric Mirror Petition for Waiver at 2.

waiver requests would serve the public interest. The Commission adopted the DTV tuner requirement to “provide off-the-air DTV reception capability to the general population on a schedule that will promote a rapid completion of the DTV transition” and to “maximize the number of TV receivers with DTV tuners on the market, with a final goal that all new television receiver products include a DTV tuner, as quickly as possible.”¹⁴ Neither Kohler nor Electric Mirror offers any persuasive public interest justification for a waiver of the DTV tuner requirement for their respective products.

Kohler’s one-page waiver request merely states that the DTV tuner requirement would not be undermined because consumers are unlikely to use Kohler’s products as primary receivers. This rationale completely ignores the Commission’s stated goal of ensuring that all new TV receivers include DTV tuners as quickly as possible. Kohler’s waiver request is particularly odd given that the covered products will not be introduced until May 2007, two to three months after the Commission’s deadline for DTV tuners, and that product sales will be limited in 2007. It is difficult to understand how the public interest would benefit by allowing Kohler a waiver to *begin* selling noncompliant analog receivers that will be obsolete in less than two years. The public would be better served if Kohler simply waits to introduce its new products until such time as it is able to include the required DTV tuners.

Electric Mirror claims that grant of its request will benefit the hotel industry, which is relying on Electric Mirror to meet “unique needs.”¹⁵ All television sets sold in the lodging channel are required to adhere to the Commission’s DTV tuner requirement;

¹⁴ *Receiving Capability Second Report and Order* at 18609 ¶ 6 (emphasis added).

¹⁵ Electric Mirror Petition for Waiver at 5.

indeed, other manufacturers ceased all analog TV shipments to hotels after February 28, 2007. Moreover, Electric Mirror does not explain why its hotel clients cannot wait the extra four months Electric Mirror claims it will take to integrate DTV tuners into its products. Given the Commission's stated goal to "maximize the number of TV receivers with DTV tuners on the market,"¹⁶ there is no public interest benefit to be derived from a grant of Electric Mirror's waiver request.

For the foregoing reasons, LG respectfully requests that the Commission deny the requests for waivers of the DTV tuner requirement submitted by Kohler and Electric Mirror.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "John Taylor", with a stylized, cursive script.

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¹⁶ *Receiving Capability Second Report and Order* at 18609 ¶ 6.